LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
FEB 10 1970
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 961

RUSSELL DEAL, TED HARDING, DON E. DEPPERMANN, LELAND SLOAN, ENO LOOK, ROY MARTIN, HARRY MALONE, HARRY MULVANEY, HENRY DEPPERMANN, H. J. WEYHRICH, HOWARD BEAL, CLINTON GESSELL, ANDY FLYNN, EDWARD WOERTZ, AARON STAHL, HARRY TAYLOR, LEE STICKLE, RAYMOND LADD, SHERM McCLOUTH and EVERETT BITNER,
Petitioners,

vs.

MILO W. NELSON, WILLIAM Q. DRAKE, HOWARD S. BEENEY, ROBERT THIEMANN, RUSSELL PETERS and VICTOR KASEL,
Respondents.

BRIEF

Of Repondents Opposing Petition for a Writ of Certiorari to the Supreme Court of Illinois

WILLIAM J. SCOTT
Attorney General, State of Illinois
By FRANCIS T. CROWE
Assistant Attorney General of Counsel
160 North LaSalle Street
Chicago, Illinois 60600

ROBERT S. CALKINS,
State's Attorney of Peoria County
Court House
Peoria, Illinois 61602
Counsel for Respondents

St. Louis Law Printing Co., Inc., 411-15 N. Eighth St. 63101 314-231-4477

LIST OF AUTHORITIES CITED

Page

Cases

A Magnano Co. v. Hamilton, 292 U. S. 40, 54 S. Ct. 599 ..... 2, 3

Gloucester Water Supply Co. v. Gloucester, 193 U. S. 580, 24 S. Ct. 557 2

Greene v. Louisville & Interurban R. Co., 244 U. S. 499, 37 S. Ct. 673, 61 L. ed. 1280 2

In re 168 Adams Bldg. Corporation, 105 F. 2d 704 .... 2, 3

Insurance Company v. The Treasurer of Kings County, 78 U. S. 204, 11 Wallace 204, 20 L. ed. 112 ..... 2, 3

Newburyport Water Co. v. Newburyport, 193 U. S. 561, 24 S. Ct. 553 2

Owens v. New York Central Railroad Company, 267 F. Supp. 252 ..... 2, 3

People ex rel. Harding, County Collector, v. Hart, 332 Ill. 467, 163 N. E. 769 ..... 2, 3

People ex rel. Toman, County Collector, v. Marine Trust Co., 375 Ill. 488, 31 N. E. 2d 933 ..... 2, 3

Tuttle v. Bell, County Collector, 377 Ill. 510, 37 N. E. 2d 180 ..... 1, 3

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 961

RUSSELL DEAL, TED HARDING, DON E. DEPPERMANN, LELAND SLOAN, ENO LOOK, ROY MARTIN, HARRY MALONE, HARRY MULVANEY, HENRY DEPPERMANN, H. J. WEYHRICH, HOWARD BEAL, CLINTON GESSELL, ANDY FLYNN, EDWARD WOERTZ, AARON STAHL, HARRY TAYLOR, LEE STICKLE, RAYMOND LADD, SHERM McCLOUTH and EVERETT BITNER,
Petitioners,

vs.

MILO W. NELSON, WILLIAM Q. DRAKE, HOWARD S. BEENEY, ROBERT THIEMANN, RUSSELL PETERS and VICTOR KASEL,
Respondents.

BRIEF

Of Repondents Opposing Petition for a Writ of Certiorari to the Supreme Court of Illinois

REASONS FOR DENYING THE WRIT

I. To assess agriculture lands for taxation on "fair cash return" instead of "fair cash value" as contended by petitioners would be in direct contravention of section one of article 9 of the Illinois constitution.

Tuttle v. Bell, 377 Ill. 510, 37 N. E. 2d 180, petition for writ of certiorari denied March 2, 1942, 62 S. Ct. 801, 315 U. S. 815, 86 L. Ed. 1213;

Greene v. Louisville & Interurban R. Co., 244 U. S. 499, 37 S. Ct. 673, 680;
People v. Marine Trust Co., 375 Ill. 488, 31 N. E. 2d 933.

II. The method used to assess petitioners' land has been legal in Illinois since 1878 and only a constitutional amendment could change it.

A. Magnano Co. v. Hamilton, 292 U. S. 40, 54 S. Ct. 599;
In re 168 Adams Bldg. Corporation, 105 F. 2d 704;
People v. Hart, 332 Ill. 467, 163 N. E. 769.

III. The complaint of petitioners as amended filed in the State courts does not in substance state a "Federal question" and the petition for the writ should be denied.

Owens v. New York Central R. R., 267 F. Supp. 252;
Insurance Company v. The Treasurer, 78 U. S. 204, 11 Wallace 204;
Gloucester Water Supply Co. v. Gloucester, 193 U. S. 580, 24 S. Ct. 557;
Newburyport Water Co. v. Newburyport, 193 U. S. 561, 24 S. Ct. 553.

The complaint filed below in Peoria county, as amended, does not raise a substantial "Federal question" such as to give this Court jurisdiction. Merely alleging that the Federal constitution has been violated is not sufficient. There must be more than the possibility that constitutional questions may be "lurking" in the background. **Newburyport Water Co. v. Newburyport**, 193 U. S. 561, 24 S. Ct. 553.

A perusal of the record in the case below and in particular the pleadings do not show substantial, essential allegations of constitutional questions. The statements

are mere conclusions and the net result of the case is that there was no showing or proof that the farm land was so overvalued as to amount to constructive fraud but that in every particular the farm land was assessed and taxed in accordance with the law of Illinois. **Insurance Company v. The Treasurer,** 78 U. S. 204, 11 Wallace 204; **Owens v. New York Central Railroad Company,** 267 F. Supp. 252.

To change the method and procedure to assess farm land in Illinois as urged by petitioners would then be in direct violation of the Illinois constitution and discriminate against other taxpayers. Then owners of commercial property would demand the same treatment and to carry the point further, owners of residential property wherein they reside should not be taxed at all. **Tuttle v. Bell,** 377 Ill. 510, 37 N. E. 2d 180.

Petitioners contend that the present method of assessing farm land for taxation is driving them out of business. However, until the Illinois constitution is changed such a possibility does not give the Courts jurisdiction. This is a legislative and not a judicial matter. **A. Magnano v. Hamilton,** 292 U. S. 40, 54 S. Ct. 599; **In re 168 Adams Bldg. Corporation,** 105 F. 2d 704; **People v. Marine Trust Co.,** 375 Ill. 488, 31 N. E. 2d 933.

The fact of assessing land and the improvements thereon separately and then adding them together for the total assessed valuation does not raise any constitutional question. This method is necessary as Illinois assesses lots and lands by the quadrennial system. There can be no change in the assessed valuation during this period unless improvements are built or torn down. Otherwise there would be unjust discrimination. **People v. Hart,** 332 Ill. 467, 163 N. E. 769. Therefore, Section 524, Chapter 120, Illinois Revised Statutes does not violate the due process clause of the Fourteenth amendment to the Federal constitution.

It would seem that the Tuttle v. Bell case above cited should control and the writ in this must be denied as it was in the Tuttle case.

Respectfully submitted

WILLIAM J. SCOTT
Attorney General
State of Illinois

By FRANCIS T. CROWE
Assistant Attorney General
Of Counsel
160 North LaSalle Street
Chicago, Illinois 60600

ROBERT S. CALKINS
State's Attorney of Peoria County
Court House
Peoria, Illinois 61602
Counsel for Respondents